

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance  
(916) 322-5662

• • Administration  
322-5660

• • Executive/Legal  
322-5901

• • Enforcement  
322-6441

October 15, 1984

Arthur Bolli  
General Manager  
Humboldt Bay Municipal  
Water District  
P.O. Box 95  
Eureka, CA 95501

Advice Letter No. A-84-246

Dear Mr. Bolli:

Thank you for your request for advice on behalf of R. H. Nicholson who is a candidate for a position on the Humboldt Bay Municipal Water District's Board of Directors.

### FACTS

Mr. Nicholson is the President of Industrial Electric Service Company. He owns less than a 10% interest in the company. Industrial Electric Service Company provides goods and services to the District. In addition, many clients of Industrial Electric Service Company are major wholesale customers of the District. Two such clients are Louisiana-Pacific Pulp Mill and the Simpson Pulp Mill. The District is currently involved in litigation with these companies over water rates and the Board of Directors will be faced with many decisions concerning the litigation during the next year.

### QUESTION PRESENTED

If Mr. Nicholson is elected to a position on the District's Board of Directors, will his financial interest in Industrial Electric Service Company prevent him from accepting the position?

### CONCLUSION

If Mr. Nicholson is elected to a position on the District's Board of Directors, the Political Reform Act will not prevent

him from accepting the position. However, the Act may affect his governmental decisionmaking.

#### DISCUSSION

The Political Reform Act does not prevent an individual from assuming a governmental position. However, once the individual becomes a public official, the Act may affect his governmental decisionmaking. Government Code Section 87100<sup>1/</sup> prohibits a public official from making, participating in the making, or in any way attempting to use his official position to influence, a governmental decision in which he knows or has reason to know he has a financial interest. An official has a "financial interest" within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect<sup>2/</sup> on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000)....

(c) Any source of income ... aggregating two hundred fifty dollars (\$250) or more in value provided to ... the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a[n] ... officer....

#### Section 87103.

Mr. Nicholson holds an investment interest in, and a business position with, the company and it is a source of income to him. If he is elected to a position on the Water District's Board, he must disqualify himself on any governmental decision which will foreseeably have a material financial effect on Industrial Electric Service Company. This may include some, or all, of the decisions concerning the work that the company performs for the District.

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<sup>1/</sup> Hereinafter all statutory references are to the Government Code unless otherwise indicated.

<sup>2/</sup> See the enclosed copy of 2 Cal. Adm. Code Section 18700 for the definition of "material financial effect."

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Because Mr. Nicholson's ownership interest in the company is less than 10%, the company's clients will not be treated as sources of income to Mr. Nicholson and he will not be required to disqualify himself on decisions materially affecting the clients. For example, Mr. Nicholson will be allowed to make decisions concerning the District's litigation with Louisiana-Pacific and Simpson, as long as it is not foreseeable that these decisions will have a material financial effect on the Industrial Electric Service Company.

The advice contained in this letter is confined to the provisions of the Political Reform Act. I have not addressed the issue of whether Sections 1090 and 1091 apply because these provisions are under the jurisdiction of the Attorney General's Office. If I can be of any help in the future, please feel free to contact me at (916) 322-5901.

Very truly yours,

*Janis Shank McLean*  
Janis Shank McLean  
Staff Counsel  
Legal Division

JSM:plh  
Enclosure



# HUMBOLDT BAY MUNICIPAL WATER DISTRICT

828 SEVENTH STREET, P. O. BOX 95 - EUREKA, CALIFORNIA 95501

OFFICE 707-443-5018 ESSEX 707-822-2918

SEPTEMBER 25, 1984

## BOARD OF DIRECTORS

LESTER L. LARSEN, PRESIDENT  
LLOYD L. HEDATHORN, VICE PRESIDENT  
WALTER J. WARREN, SECRETARY-TREASURER  
JOHN G. BAURIEDEL, DIRECTOR  
ALAN NILSEN, DIRECTOR

GENERAL MANAGER  
ARTHUR BOLLI

SUPERINTENDENT  
DONALD C. REED

MS. BARBARA MILMAN  
FAIR POLITICAL PRACTICES COMMISSION  
P.O. BOX 807  
SACRAMENTO, CA 95804

DEAR MS. MILMAN:

THE DISTRICT RECENTLY RECEIVED THE ATTACHED REQUEST FROM MR. R.H. NICHOLSON WHO IS A CANDIDATE IN THE NOVEMBER 1984 ELECTION FOR ONE OF OUR DIRECTORIAL DIVISIONS.

I SPOKE ABOUT THIS REQUEST TO JANICE MCLEAN OF YOUR OFFICE VIA TELEPHONE RECENTLY AND SHE SUGGESTED I SEND YOU A LETTER SETTING THE MATTER FORTH IN WRITING. PER MR. NICHOLSON'S ATTACHED STATEMENTS, HIS DIRECT INTEREST IN THE COMPANY IS VERY SMALL (LESS THAN 10%) AND HIS DUTIES AS COMPANY PRESIDENT ARE LARGELY ADMINISTRATIVE.

THE CONCERN OVER POTENTIAL CONFLICT SEEMS TO STEM PRIMARILY FROM THE FACT THAT MANY OF THE DISTRICT'S MAJOR WHOLESALE CUSTOMERS ARE ALSO CUSTOMERS OF MR. NICHOLSON'S COMPANY, INDUSTRIAL ELECTRIC SERVICE COMPANY.

FOR EXAMPLE, THE DISTRICT'S TWO LARGEST CUSTOMERS, THE LOUISIANA-PACIFIC PULP MILL AND THE SIMPSON PULP MILL, WHICH ACCOUNT FOR 80% OF THE DISTRICT'S CONTRACTED WATER SALES ARE, ACCORDING TO MR. NICHOLSON, ALSO CUSTOMERS OF INDUSTRIAL ELECTRIC. THE DISTRICT IS PRESENTLY THE DEFENDANT IN A LONG RUNNING COURT BATTLE OVER WATER RATES WITH THESE TWO COMPANIES. DECISIONS WITH REGARD TO FURTHER COURT ACTION AND/OR NEGOTIATIONS, ETC. WILL BE ONE OF THE MAJOR CHALLENGES FACING THE BOARD IN THE COMING YEAR.

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HUMBOLDT BAY MUNICIPAL WATER DISTRICT

BARBARA MILMAN  
SEPTEMBER 17, 1984  
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PLEASE LET US KNOW AS SOON AS POSSIBLE WHETHER, GIVEN THE ABOVE CIRCUMSTANCES, YOU SEE ANY PROBLEM WITH MR. NICHOLSON'S CANDIDACY AND POSSIBLE DIRECTORSHIP ON THE DISTRICT'S BOARD.

PLEASE FEEL FREE TO CALL ME, MR. NICHOLSON (NUMBER IN ATTACHED LETTERHEAD), OR THE DISTRICT'S GENERAL COUNSEL, RONALD ANGELL (707-443-5643) IF ANY ADDITIONAL INFORMATION IS NEEDED.

SINCERELY,

ARTHUR BOLLI  
GENERAL MANAGER

AB/FAA

COPY: RONALD ANGELL  
R.H. NICHOLSON